IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9070 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHAVANBHAI N DIHORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9070 of 1992

MR BIPIN I MEHTA for Petitioner No. 1

MR MANISH DAGLI, AGP, for Respondent No. 1-2

MR BN KAKADIYA for Respondent No. 3

MR KETAN A DAVE for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/04/2002

CAV JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner - Bhavanbhai Narsibhai Dihora challenges the order dated 9-10-1992 (Annexure I)

passed by the Collector, Bhavnagar granting land admeasuring 10 acres out of land bearing Survey No.127 in village Akwada, Taluka District Bhavnagar to respondent No.4 for salt industry. The petitioner has also prayed for a writ to direct the respondent - authorities to grant the petitioner 10 acres of land from the said survey number.

2. The facts leading to filing of the petition, as averred by the petitioner, are that the petitioner had applied for grant of the aforesaid land for salt industry on 16-4-1986. The application was however rejected by the Collector on 4-4-1987 by a letter at Annexure A on the ground that no more land was available from Survey No.127. Respondent No.4 had thereafter applied for allotment of the same land on 4-4-1989 but that application came to be rejected by the Collector by his reply dated 22-8-1989 (Annexure B) on the same ground that no land was available in Survey No.127 in village Akwada. Respondent No.4 was again replied on 16-12-1991 (Annexure D) that no land was available in Survey No.127 for salt industry. Many other persons like Babubhai Shardulbhai, Gandabhai Dihora and Dabhi Valjibhai were also given similar reply by the Collector on 11-4-1992 (Annexure E) that land in Survey No.127 was not available for salt industry. Still respondent No.4 persisted through MLA Shri Shaktisinh Gohil to get the same land for salt industry and that is how ultimately the Collector passed order dated 9-10-1992 granting the land in question to respondent No.4.

3. Mr Bipin I Mehta, learned counsel appearing for the petitioner has challenged the impugned order dated 9-10-1992 in favour of respondent No.4 on the following grounds:-

(i) The petitioner had applied prior in point of time than respondent No.4. The petitioner's application dated 16-4-1986 was rejected and thereafter respondent No.4 had applied. At the first instance, application of respondent No.4 was also rejected but respondent No.4 was thereafter granted the land overlooking the petitioner's prior claim for the land. The decision of the respondent - authorities is, therefore, arbitrary and discriminatory.

(ii) The grant of land in favour of respondent No.4 is at the instance of Shri Shaktisinh Gohil who was at the relevant time a Member of the Legislative Assembly and, therefore, also the impugned

decision is malafide and illegal;

(iii) The impugned decision is in violation of the provisions of sub-section (4) of Section 96 of the Old Act corresponding to Section 108 of the Gujarat Panchayats Act, 1993 as respondent No.4 has been given land out of the gauchar land. As per the said provision, gauchar land can be resumed only for a public purpose. Grant of land to respondent No.4 was not for a public purpose.

4. Mr Manish Dagli, learned AGP for State of Gujarat and Collector, Bhavnagar and Mr Ketan Dave, learned counsel for respondent No.4 have opposed the petition and made the following submissions on the basis of the affidavit in reply dated 14-12-2000 of Collector, Bhavnagar and affidavit in reply dated 15-3-1993 and additional affidavit in reply dated 13-12-2000 of respondent No.4:-

(i) Respondent No.4 first made application for grant of same land from Survey No.127 for salt industry to the Collector, Bhavnagar on 10-3-1981 (Annexure I P.34). Hence the application of the petitioner was not prior in point of time;

(ii) The land was granted to respondent No.4 for relevant considerations and not on account of any extraneous considerations. Respondent No.4 had 17 years working experience as Salt Works Field Supervisor. Even Khar Jamin Vikas Mandal, Gujarat State had also made recommendation in favour of respondent No.4 as per their letter dated 13-10-1992 (Annexure IV). Hence respondent No.4 had legitimate claim for the grant of the land for salt industry.

(iii) The land bearing Survey No.127 was admeasuring 173 acres and 15 gunthas of gauchar land. The land admeasuring 10 acres for which respondent No.4 had put forward his claim was unfit for the purpose of gauchar as the sea water was covering the land during tides, as per the certificate dated 10-7-1989 issued by the Sarpanch of the Akwada Gram Panchayat (Annexure II). The Akwada Gram Panchayat had also passed resolution dated 27-6-1989 recommending that the said land admeasuring 10 acres in Survey No.127 be granted to respondent No.4 for salt industry.

In view of these developments, grant of land to

respondent No.4 was not arbitrary or discriminatory or malafide nor was it in violation of any statutory provision.

5. Having heard the learned counsel for the parties, it appears to the Court that as far as the first contention urged on behalf of the petitioner is concerned, in view of the fact that respondent No.4 had made application dated 10-3-1981 (Annexure I to the reply of respondent No.4), it cannot be said that the petitioner had made any prior claim for the grant of land in Survey No.127. A perusal of the said application dated 10-3-1981 indicates that respondent No.4 was already employed earlier for 18 years with Bhavnagar Salt & Industries and respondent No.4 had applied for 10 acres of land in Survey No.127 of Akwada village. First time the petitioner applied for land was on 16-4-1986 and, therefore, the petitioner did not have a prior claim for the grant of land.

6. Coming to the second contention, it is true that in the years 1987 and 1989, the applications of the petitioner and respondent No.4 and other persons like Babubhai Shardulbhai, Gandabhai Dihora were rejected by the Collector on the ground that no land was available in Survey No.127 for salt industry. However, thereafter, the Gram Panchayat of village Akwada passed a resolution to the effect that 10 acres of land out of Survey No.127 be given to respondent No.4 for salt industry. This was done on the basis that 10 acres of land in question in Survey No.127 was being covered by sea water during tides and there was no growth of any vegetation or grass and, therefore, it was not fit for gauchar purpose. In view of the said resolution dated 27-6-1989 of the Akwada Gram Panchayat, the Collector resumed the land admeasuring 10 acres in Survey No.127. The land bearing Survey No.127 in village Akwada was having a total area of 723 acres and 13 gunthas, out of which, 173 acres and 15 gunthas was treated as gauchar land for village Akwada. The Mamlatdar had given an opinion that the entire land was not being used as a gauchar land as half the land was saline and the land admeasuring 10 acres in question was open land without any vegetation. The Collector also referred to the experience which respondent No.4 had in salt industry and the resolution dated 28-3-1992 of the Gram Panchayat. The Collector accordingly resumed the land admeasuring 10 acres from gauchar land under section 96 (4) of the Gujarat Panchayats Act, 1961, corresponding to section 108 (4) of the Gujarat Panchayats Act, 1993 and granted the said land admeasuring 10 acres to respondent No.4 on lease for a period of 20 years.

In view of the aforesaid facts, it is not possible to hold that the grant in favour of respondent No.4 was malafide. It may be that there might have been intervention of the local MLA but that by itself would not make the grant malafide when there were other factors in favour of respondent No.4 like his past experience in salt industry, the resolution of Akwada Gram Panchayat and also the opinion of the Khar Jamin Vikas Mandal.

7. Coming to the contention about violation of provisions of section 96 (4) of the Gujarat Panchayats Act, 1961 corresponding to section 108 (4) of the Panchayats Act, 1993, the said provision reads as under:-

> 108(4).- Where any open site or waste, vacant or grazing land vesting in Government, has been vested by Government in a panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land, if it is required by it for any public purpose;

8. In Bhupatbhai Oghadbhai vs. State of Gujarat, 1996 (1) GLR 600, a similar challenge was raised to the action of the State Government resuming the gauchar land for the purpose of allotting the same to persons belonging to the scheduled caste and backward communities on the basis of the resolution passed by the Gram Panchayat. In that case, 93 acres and 39 gunthas of gauchar land was made available for rehabilitation of the scheduled castes and backward class people and the grazing land was reduced to 60 acres and 20 gunthas. The Court, however, negatived the challenge and held that the public purpose would demand balancing the need of cattle for grazing and the need for providing land to the down trodden people of the village. In the instant case, though the grant of 10 acres of land is not given to any backward class person but the fact remains that even after the grant of land for salt industry, the Akwada Gram Panchayat was left with more than 150 acres of land for gauchar purpose and that even out of the said land only half the land was being used as gauchar and the remaining half land was saline land. Hence, if such saline land which was even otherwise covered with sea water during tides is made available for running salt industry, it cannot be said that there was violation of the provisions of section 96 (4) of the Gujarat Panchayats Act, 1961.

9. In view of the above discussion, there is no

merit in any of the contentions urged on behalf of the petitioner for challenging the grant of land to respondent No.4. Even so, it goes without saying that if more land is available or can be made available for running a salt industry, respondents No.1 and 2 are bound to consider the petitioner's claim for grant of such land to the petitioner in accordance with law.

10. Subject to the aforesaid observation, the petition is dismissed. Rule is discharged with no order as to costs.

(M.S. Shah,J)

zgs/-